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THE BIBLICAL TEACHING CONCERNING DIVORCE

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I. OLD TESTAMENT TEACHING AND JEWISH USAGE

The Old Testament passages bearing upon the dissolubility or indissolubility of marriage, or referring to divorce, are the following: Gen. 2:24; Hosea 1:2 ff.; 3:1 ff.; Deut. 22:19, 29; 24:1-4; Jer. 3:1; Lev. 21:7, 14; 22:13; Num. 30:9; Ezra 9:2 ff., 12; chap. 10; Mal. 2:10-16.¹

Gen. 2:24,² though it contains no direct reference to divorce, presents a conception of marriage which is distinctly unfavorable to the dissolubility of marriage. Dillmann says respecting it: "It is to be observed that it is marriage with one wife which is here represented as the normal relationship, and at the same time marriage which transcends love of parents even." To this is to be added that the expression "shall be one flesh"—one being, even physically viewed—suggests the most intimate possible union, and therefore not temporary or made with a view to subsequent dissolution.³ Yet the passage contains, of course, no direct statement concerning divorce.

The passages in Hosea⁴ are generally understood as narrating the

¹ Of these the Genesis passage is assigned by Old Testament scholars to the eighth or ninth century B. C.; Hosea, to the eighth; Deuteronomy and Jeremiah, to the seventh; Leviticus and Numbers, to the sixth; Ezra and Malachi, to the fifth.

² Gen. 2:24, "Therefore shall a man leave his father and his mother, and shall cleave unto his wife, and they shall be one flesh."

³ Another view of this passage is possible, viz., that it is a survival from most primitive times when the matriarchate was still in force; then the man joined his wife's clan, and not vice versa as in later times. The phrase "one flesh" may then be only a reflection of that previously existing condition when it was literally true. But even if this be the history and original meaning of the passage, it is probable that in historic times it was understood in the sense given it by Dillmann, and that as a reflection of the thought of this later period his interpretation is correct.

⁴ Hos. 1:2, 3, "Jehovah said unto Hosea, Go take unto thee a wife of whoredom, and children of whoredom. . . . So he went and took Gomer, the daughter of Diblaim and she conceived and bare him a son." 3:1, "And Jehovah said unto me, Go again and love a woman beloved of her friend, and an adulteress, even as

actual experience of Hosea with his wife, who after her marriage to him committed adultery and bore illegitimate children, but whom, after she had deserted him for her paramour and had been sold into slavery, he at the command of God bought back and restored to her place as wife in his house. Of divorce in a legal sense nothing is said.

Respecting the classic deuteronomic passage⁵ it is to be observed:

a) It does not institute divorce, but, finding it in existence, seeks to regulate or restrict it.

b) It is not certain whether the protasis of the sentence ends, as in R. V., with the words "some unseemly thing in her," or, as Driver holds, at the end of vs. 3. In the former case the writing of the bill of divorcement is enjoined; in the latter case it is assumed as a part of already existing usage. The difference as respects the bill of divorcement is not very material; the statute in any case practically requires the writing, whether in distinction from former usage or in continuance of it. It is perhaps of more significance as concerns remarriage. On Driver's interpretation vs. 2 assumes the possibility of such marriage; according to R. V. it expressly permits it.

c) The ground of divorce is some unseemly thing in the wife (vs. 1), or the hatred of the husband for his wife (vs. 3). It does not seem to be a part of the intent of the passage to define with exactness the legitimate grounds of divorce, or specially to insist that they shall be serious. The language implies that divorce ought not to be, or will not be, for trivial cause, but "some unseemly thing" cannot mean specifically or exclusively adultery, the penalty for which was death (22:22); on the strictest interpretation it refers to immodest

Jehovah loveth the children of Israel, though they turn unto other gods and love cakes of raisins. So I bought her to me for fifteen pieces of silver, and an homer of barley, and an half homer of barley."

⁵ Deut. 24:1-4, "When a man taketh a wife, and marrieth her, then it shall be, if she finds no favor in his eyes, because he hath found some unseemly thing in her, that he shall write her a bill of divorcement, and give it in her hand, and send her out of his house. And when she is departed out of his house, she may go and be another man's wife. And if the latter husband hate, her and write her a bill of divorcement, and give it in her hand, and send her out of his house: or if the latter husband die, who took her to be his wife, her former husband who sent her away may not take her again to be his wife, after that she is defiled; for that is abomination before Jehovah."

and indecent behavior. In any case it is left to the husband to determine what constitutes sufficient reason for divorce.

d) The specific obstacles which the statute puts in the way of divorce are three: (1) The divorce must be in writing. The husband could not in a moment of anger dissolve the marriage. Though the law does not require that the writing should be signed and sealed in presence of an officer, it would probably often at least be necessary to resort to a scribe in order to have the writing done, and usage may have required this.⁶ (2) The divorce must be delivered to the wife. This was perhaps a formal act, possibly accompanied in usage by legal formalities; at any rate a definite step, requiring a second definite decision on the part of the husband. Added to the necessity of having the divorce written out it gave time for anger to cool and sober second thought to take its place. (3) But, most important, the statute prohibited remarriage in case the woman, after being sent away, should marry another. This definitely excluded repeated experiment on the part of the husband, and the eventual return to an earlier choice, by making his dissolution of the marriage final, in case the wife should marry another. It would tend also to lead him, even after divorce, to consider whether he should not take back the wife of his youth before she had become irrevocably lost to him. It would also tend to discourage the wife from accepting a second husband since such marriage, even if subsequently dissolved, was an absolute barrier to returning to her husband whom she had loved and perhaps still loved. Thus in all these ways the statute put obstacles in the way of probationary and experimental marriage.

e) The statute does not prohibit a second marriage on the part of the husband who has divorced his first wife, nor interpose any obstacles to it except those that are implied above.

f) The statute does not prohibit the marriage of the divorced wife to another. On the contrary, it assumes this as possible, not to say probable, or expressly permits it, and bases its practical dissuasion from hasty divorce on this possibility. That such a mar-

⁶ Eventually the custom of applying to a rabbi to have the divorce written gave to him functions that approached those of a court. But even for centuries after the Christian era the fact that divorce was a matter for the husband's decision was recognized. See Amram, *The Jewish Law of Divorce*, pp. 32, 52 f., 78 f.

riage is iniquitous is possibly suggested in the phrase "after that she is defiled" (vs. 3). But, in view of the whole tenor of the passage, it seems probable that this word is to be taken rather in a relative than in an absolute sense; the union with a second husband is relatively to her former husband a defilement rather than a thing in itself iniquitous.

g) No protection is afforded the wife except against hasty action on her husband's part. The right to divorce rests solely with the husband. The wife has no right to divorce her husband,⁷ and she has no appeal from his decision to any higher authority.

Of the other deuteronomic passages, 22:13-19 provides that, if a husband shall falsely accuse his wife of having been unchaste before marriage, he shall be chastised by the elders of the city, and shall thereafter have no right to divorce her; and 22:28, 29 enacts that a man who shall have carnal relation with an unbetrothed virgin shall marry her, and shall have no right thereafter to divorce her. If in this case the penalty is fitted to the crime, and is not simply exemplary, the ground for it lies in the fact that by ruining the woman's reputation he has made marriage after divorce impossible for her; hence must not divorce her. The implication, then, is that remarriage is the privilege of the divorced woman.

The Jeremiah passage⁸ is apparently an allusion to Deut. 24:1-4, the more interesting in view of the fact that Jeremiah's activity began five years before, and extended for some years after, the discovery of this "Book of the Law" in Josiah's reign, 621 B. C. Like Hosea, Jeremiah compares the restoration of a divorced wife to God's love for Israel; but implies that what Deut. 24:1-4 prohibits, no man would be willing to do, and that the doing of it would greatly "pollute the land."

⁷ Amram, *op. cit.*, pp. 55 ff., thinks that the germ of a wife's right to sue for divorce exists even in the Pentateuch, in Exod. 21:7-11; Deut. 21:14. Yet it is to be observed that in no case could the wife divorce her husband; at most she could only demand that the husband give her a divorce (p. 60); and the existence of a tribunal to which the wife could appeal for the enforcement of her rights is even for New Testament times a matter of uncertain inference from data strictly belonging to a later period.

⁸ Jer. 3:1, "If a man put away his wife, and she go from him, and become another man's, will he return unto her again? will not that land be greatly polluted? But thou hast played the harlot with many lovers; yet return again to me, saith Jehovah."

Lev. 21:7, 14 prohibits a priest from marrying a divorced woman, implying, on the one hand, that such a woman was in a sense unclean and under a certain degree of opprobrium, and, on the other hand, that her marriage to an Israelite not a priest was permitted.

Lev. 22:13 and Num. 30:9 merely mention the divorced woman, without implication as to the propriety or impropriety of divorce.

Ezra, chap. 9, relates that Ezra, discovering that many of the Israelites who had returned from captivity, and even priests and Levites, had taken to themselves wives "from the peoples of the land," was smitten with horror at this iniquity and required all who had married such wives to put them away. Chap. 10 narrates the putting-away of these non-Israelitish wives and their children. This is the one instance in the Old Testament in which divorce is approved.

Malachi,⁹ who wrote in the days of Ezra, sharply reproves his countrymen for marrying foreign wives and for divorcing, each of them, the wife of his youth.

It thus appears that the Old Testament writers from the eighth to the fifth centuries are in substantial agreement in their ideal of marriage; viz., the union of one man and one woman till death part them. That ideal is not insisted upon or embodied in statute. On the one side, polygamy is not prohibited; and, on the other, the husband is permitted to divorce his wife for causes of the adequacy of which he is apparently to be judge. But alike the deuteronomic legislation and the teachings of the prophets are directed to the discouraging and checking of divorce, and to the realization of the ideal of life-long union of husband and wife. In one instance only is divorce encouraged; viz., in the case of the Israelites of the days of Ezra who had married heathen wives.¹⁰ Here, in the interests of

⁹ Mal. 2:11-14, "Judah hath dealt treacherously, and an abomination is committed in Israel and in Jerusalem; for Judah hath profaned the holiness of Jehovah which he loveth, and hath married the daughter of a foreign god. Jehovah will cut off to the man that doeth this him that waketh and him that answereth, out of the tents of Jacob, and him that offereth an offering unto Jehovah of hosts. And this again ye do: ye cover the altar of Jehovah with weeping and with groaning, insomuch that he regardeth not the offering any more, neither receiveth it with good will at your hand. Yet ye say, Wherefore? Because Jehovah hath been witness between thee and the wife of thy youth, against whom thou hast dealt treacherously."

¹⁰ Abraham also is recorded to have sent away Hagar and her child, with similar reason assigned: "In Isaac shall thy seed be called." The taking of Michal from

the purity of Israel's religion, marriages of which there had already been issue were dissolved.

That, in view of these statutes and teachings, there should have been differences of opinion among the Jewish teachers of New Testament times concerning what constituted legitimate ground for divorce is not surprising. The school of Shammai, as is well known, interpreted the "unseemly thing" (literally, "the nakedness of a thing") of Deut. 24:1 as referring to unchastity, while that of Hillel made it cover anything whereby the wife displeased her husband, even, e. g., a burned dinner.¹¹ But the whole discussion seems to have been in a sense academic, having to do, primarily, with the question what the phrase meant, and so what the husband ought to regard as sufficient ground of divorce; and, secondarily, how far he ought to avail himself of the right which the law gave him. It is important to notice (a) that no one denied *in toto* the husband's right of divorce; (b) that divorce was still a private matter, in the sense that the husband divorced his wife, rather than was granted a divorce by a court; (c) that, while scribes disagreed as to what the statute meant, and so what was adequate cause of divorce, the actual power of decision was in the hands of the husband;¹² (d) that there is no indication that the right of marriage after divorce was questioned. Deut. 24:1-4

David by her father Saul (I Sam. 25:43), and her subsequent recovery by David from Palti to whom Saul had given her, hardly require discussion in this connection.

¹¹ Rabbi Akiba, of the second century, held the same view, basing on the words, "if she find no favor in his eyes" the contention that a man might divorce his wife if he found another more beautiful woman.

¹² On both this and the preceding point cf. the language of Josephus in his paraphrase of the laws of Moses (*Antiquities*, IV, viii, 23): "he that desires to be divorced from his wife for any cause (and many such causes happen among men), let him in writing give assurance that he will never use her as his wife any more; for by this means she may be at liberty to marry another husband, although before the bill of divorce be given she is not to be permitted to do so. But if she be misused by him also, or if when he is dead her first husband would marry her again, it shall not be lawful for her to return to him." See also Josephus, *Life*, §§ 75, 76, where he relates that, having married a virgin and divorced her, he married another wife at Alexandria, and that when she had borne him three children, he also divorced her, "not being pleased with her behavior" (*μη ἀρεσκόμενος αὐτῇ τοῖς ἡθεσιν*). After this he married a third wife, a Jewess by birth. The right of the husband to divorce his wife of course carried with it the possibility of divorce by mutual consent. Cf. Amram, *op. cit.*, pp. 39 f. According to this writer (p. 43), supported by Mishnah, Kethuboth, iii, 5, the husband was bound to divorce a wife guilty of adultery.

seems to have been the recognized law. Instances of a woman divorcing her husband were apparently still rare, if indeed they occurred at all among the Jews. The case of Herodias,¹³ who left her first husband to marry his brother, Herod Antipas, who had himself for the sake of this marriage divorced his wife, the daughter of Aretas, can hardly be cited as such; for Herodias was not strictly a Jewish woman, and her act was rather desertion than divorce. The gospels relate that John the Baptist denounced Herod for this marriage; but it is perhaps not without significance that he finds the iniquity, not in putting away the daughter of Aretas, but in marrying a woman who was the wife of another, the former husband not having divorced her, but she having deserted him. It is also of interest, as reflecting the state of public opinion in such matters, that, according to Josephus, (*Antiquities*, XVIII, v, 2) the disasters that subsequently overtook Herod, though in fact directly due to his divorce of his first wife, were looked upon by the people as a judgment of God upon him, not for divorcing his wife, or even for marrying his brother's wife, but for having put John to death.

In short, Jewish usage of the first Christian century remained where the legislation of Deut. 24:1-4 left the matter. The only progress was in the development of a clearly marked difference of opinion upon the meaning of the phrase "nakedness of a thing" in Deut. 24:1, and consequently as to the reasons for which a husband might properly divorce his wife. But divorce was still in the hands of the husband, and it was for him to decide whether sufficient cause existed to justify it. Marriage after divorce was permitted without restriction save in the prohibition of a second marriage of the same persons, the wife having meantime been married to another.

¹³ See Josephus, *Antiquities*, XVIII, v, 1 and 4, 'Ηρωδιάς ἐπὶ συγχύσει φρονήσασα τῶν πατρίων Ἡρώδην γαμεῖται τοῦ ἀνδρὸς τῷ ὁμοπατρὶ ἁδελφῷ διαστάσα ὢντος. Of Salome, the sister of Herod, however, Josephus (*op. cit.*, XV, vii, 10) relates that she quarreled with her husband Costabarus, and sent him a bill of divorcement (πέμπει . . . αὐτῷ γραμμάτιον ἀπολυμένη τὸν γάμον), to which Josephus adds that this was "not according to Jewish laws. For with us it is lawful for a man to do this, but a woman may not when separated from her husband of her own will marry, unless her former husband has given her up." Cases like that of Salome, were, of course, not uncommon among the Romans, and both Salome and Herodias may have been influenced by Roman usage. It is perhaps not without significance that it is Mark only among the gospels that mentions the possibility of a wife divorcing her husband. In I Cor. 7:10, 11, also the matter is spoken of reciprocally, though in both cases it is leaving rather than putting away that is mentioned.